

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

**RECEIVED**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

McCLEODUSA TELECOMMUNICATIONS )  
SERVICES, INC. )

Petition for Preemption of Nebraska )

Public Service Commission Decision Permitting )

Withdrawal of Centrex Plus Service by )

US WEST Communications, Inc. )  
)

CC Docket No. 98-84

**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files initial comments in support of the petition for preemption ("Petition") filed by McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") on May 29, 1998 in the above-captioned proceeding.<sup>1</sup> WorldCom urges the Commission to grant the McLeodUSA Petition and preempt the decision by the Nebraska Public Service Commission ("PSC") allowing US WEST to stifle local competition by withdrawing the ability to resell Centrex Plus service.

**I. MCLEODUSA PRESENTS A SOLID CASE FOR PREEMPTING STATE ACTION THAT STIFLES THE DEVELOPMENT OF LOCAL COMPETITION**

Section 253(a) of the Telecommunications Act of 1996 ("1996 Act") grants the Commission the authority to preempt any state actions that directly prohibit, or have the effect of prohibiting, competitive entry into a telecommunications market.<sup>2</sup> Further, Section 253(d)

<sup>1</sup> The Common Carrier Bureau issued a Public Notice establishing a pleading cycle. Public Notice, DA 98-1099, released June 10, 1998.

<sup>2</sup> 47 U.S.C. Section 253(a) (1998).

provides the Commission with the jurisdiction to preempt the enforcement of any statute, regulation, or legal requirement imposed by a state that violates subsection (a).<sup>3</sup> The Commission has read these two provisions together as requiring the Commission to preempt "not only express restrictions on entry, but also restrictions that indirectly produce that result."<sup>4</sup>

The 1996 Act also establishes the resale of ILEC services as a legally-protected pathway for competitive local exchange carriers ("CLECs") to provide local services. Section 251(b)(1) directs every local exchange carrier "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services."<sup>5</sup> US WEST and other incumbents are bound by a separate statutory duty to offer their retail services at wholesale rates, and a similar requirement "not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service."<sup>6</sup>

The McLeodUSA Petition presents a compelling case for preemption. The Nebraska PSC, by allowing US WEST to withdraw Centrex Plus service within the state, effectively sanctioned US WEST's concerted efforts to prevent CLECs from offering competing local service in Nebraska. As McLeodUSA points out, Centrex resale is a critical entry strategy for many CLECs because it provides a feature-rich service which resellers can customize and

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<sup>3</sup> 47 U.S.C. Section 253(d).

<sup>4</sup> Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, CCB Pol 96-13, 96-14, 96-16- 96-19, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997) at para. 41 ("Texas Preemption Order").

<sup>5</sup> 47 U.S.C. Section 251(b)(1).

<sup>6</sup> 47 U.S.C. Section 251(c)(4).

tailor to serve individual customer needs.<sup>7</sup> The availability of Centrex resale is especially crucial in rural states such as Nebraska, where the deployment of network facilities is far more difficult and resource-intensive than in more densely-populated, urbanized areas. With Centrex resale, CLECs initially can develop a small base of customers and then, as that base grows, begin to introduce their own facilities into the market. In the absence of Centrex resale and unbundled network element ("UNE") combinations, CLECs have no other viable entry strategy except facilities build-out, and thus no near-term entry vehicle in many areas of the country.

Indeed, in the experience of WorldCom's MFS Communications and Brooks Fiber subsidiaries, Centrex provides an invaluable entry pathway. In conjunction with its fully-operational local network facilities located in 71 Metropolitan Statistical Areas ("MSAs") across the country, WorldCom also utilizes Centrex as a time-tested, proven alternative method for serving customers. By participating in many of the state commission proceedings in which US WEST sought authority to withdraw Centrex, WorldCom has been able to observe first-hand the paucity of US WEST's case.<sup>8</sup> Not surprisingly, in state after state, US WEST's efforts have met with the failure they deserve. The State of Nebraska represents an unfortunate but important exception, one the Commission cannot afford to ignore.

In all the states where US WEST has sought to withdraw Centrex, it has offered

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<sup>7</sup> McLeodUSA Petition at 3.

<sup>8</sup> See, e.g., MFS Intelenet of Minnesota, Inc.'s Post-Hearing Brief, Minnesota PUC Docket No. P-421/EM-96-471, OAH Docket No. 3-2500-10567-2, filed November 7, 1996 ("MFS Minnesota Brief"); Opposition of MFS Intelenet of Minnesota, Inc. to US West Communications, Inc.'s Petition for Rehearing, Minnesota PUC Docket No. P-421/EM-96-471, OAH Docket No. 3-2500-10567-2, filed March 1, 1997 ("MFS Minnesota Opposition") (attached herein).

policymakers no good reason for doing so. In fact, the only argument US WEST could muster is that Centrex provides competitors with the ability to provide a relatively inexpensive and flexible service offering to the public.<sup>9</sup> However, the 1996 Act does not allow ILECs to foreclose CLECs from reselling local services just because they are attractive. Moreover, given US WEST's repeated public claims that CLECs have no interest in serving rural states such as Nebraska, its concerted attempts to prevent CLECs from reselling Centrex services in those very same states are especially ironic. To the extent this Commission allows US WEST to get away with its gambit, US WEST's claims could become a self-fulfilling prophecy.<sup>10</sup>

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<sup>9</sup> See MFS Minnesota Opposition at 2-3.

<sup>10</sup> Certainly the circumstances under which US WEST withdrew its service -- just three days before the 1996 Act was enacted into law -- raise considerable suspicions about the anticompetitive nature of US WEST's motives. See McLeodUSA Petition at 13.

## II. CONCLUSION

The Commission should promptly grant the McLeod USA Petition, and preempt the Nebraska Public Service Commission's decision to allow US WEST to withdraw Centrex Plus service.

Respectfully submitted,

WORLDCOM, INC.



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Catherine R. Sloan  
Richard L. Fruchterman III  
Richard S. Whitt

Its Attorneys

David N. Porter  
1120 Connecticut Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 776-1550

July 10, 1998

**ATTACHMENT A**

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of U.S. West Communications, Inc.'s )  
Request to Grandparent CENTRON Services with )  
Future Discontinuance of CENTRON, CENTREX )  
and Group Usage Exchange Services )  
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OAH Docket No.: 3-2500-10567-2

PUC Docket No.: P-421/EM-96-471

**MFS INTELENET OF MINNESOTA, INC.'S POST-HEARING BRIEF**

MFS Intelenet of Minnesota, Inc. ("MFS"), through its undersigned counsel, files its post-hearing brief. A hearing in this docket was held from September 30, 1996 to October 2, 1996. US West Communications, Inc.'s ("USWC") tariff filing should be rejected in its entirety by the Administrative Law Judge. USWC's tariff filing flies in the face of established Commission policy approving CENTRON resale in Minnesota as being in the "public interest." Furthermore, allowing US West to withdraw and grandfather CENTRON services would constitute a discriminatory restriction upon the resale of its telecommunications services, in favor of USWC's existing customers and to the detriment of potential resellers, in violation of Minnesota law, and the Telecommunications Act of 1996.

**I. THE COMMISSION HAS DETERMINED THAT CENTRON RESALE BENEFITS SMALL AND MEDIUM BUSINESS END-USERS AND IS IN THE PUBLIC INTEREST.**

In its January 19, 1993 "Order Authorizing the Resale of CENTRON Service," ("Order")<sup>1</sup> this Commission concluded, following evidentiary hearings and a recommended decision, this Commission found that "CENTRON resale clearly benefits a number of small and medium-sized

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<sup>1</sup> *In the Matter of a Commission-Initiated Proceeding to Determine Whether Resale of Local Telephone Service is in the Public Interest*, Minnesota PUC Docket No. P-999/CI-90-235.

business end-users....CENTRON resale offers such customers a choice, provides system features beyond those available with 1FB/1FH service, and competes with PBX/PSTS service in some buildings.” Order at 12; *see* Tr.Vol. 1 at 26 (O’Brien).

The Order strongly contradicts the unconvincing USWC testimony which suggests that CENTRON is somehow an “obsolete” service. Ex. 4 at 12; Tr. Vol. 1 at 166-167. This USWC position is refuted by Ms. Baird’s own hearing testimony, not the least of which is that CENTRON is a growing service with more USWC customers in Minnesota in 1996 than 1995. Tr. Vol. 1 at 167. Ms. Baird also agreed that CENTRON represents twenty (20) percent of all business lines sold by USWC in Minnesota and that it “makes a substantial contribution to US WEST’s revenue requirement in Minnesota.” (*Id.* at 106)<sup>2</sup> The Commission observed that due to volume discounts in USWC’s CENTRON tariff, purchasing CENTRON service directly from USWC may not be economical for small and medium-sized businesses with fewer than 20 lines. However, it concluded:

Resellers of CENTRON, however, can provide CENTRON to a segment...of small and medium-sized businesses at a rate that makes CENTRON an economical option. In so doing, CENTRON

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<sup>2</sup> Indeed, the Commission has noted that CENTRON is second only to 1FB/1FH in contribution to USWC and “makes a greater contribution than either a stand-alone PBX or PSTS PBX Service....” Order at 9. *See also*, Tr. at 168-69 (Baird). While USWC complains of uneconomic arbitrage by resellers as the reason for its tariff filing, USWC took the calculated risk to grandfather CENTRON service without a replacement product being available as opposed to other possible options, such as seeking a rate adjustment for CENTRON services to make up any lost contribution resulting from CENTRON resale. In the 1993 Order, the Commission invited USWC to pursue a comprehensive review of its rates in Minnesota in connection with a possible adjustment of CENTRON rates. Order at 12-13; Tr. at 118. However, USWC, concerned in part about the adverse reaction to “large disruptive price increases” by its existing customers, has since opted not to attempt any CENTRON repricing in Minnesota. Tr. at 115.



resellers unquestionably expand the availability of sophisticated business options to such customers.

*Id.* at 8 (footnote omitted). Therefore, USWC's argument that CENTRON is an "obsolete" service appears nothing more than wishful thinking. The only alternative identified by Ms. Baird to CENTRON in her affidavit was PBX service. Ex. 4 at 12; Tr. at 167. However, Ms. Baird admitted that USWC's own marketing materials extol the virtues of CENTRON/Centrex services over PBX because CENTRON is "competitively priced," with none of the "large capitalized investment and lead time for new PBX service," and because it is "less risky than investing in on-premise equipment which is subject to obsolescence...." Tr. at 119-121; Ex. 7.

Another USWC-suggested "alternative" for market entry by resellers, first proposed by USWC in Ms. Baird's September, 1996 rebuttal testimony, is a possible arbitrated interconnection agreement between USWC and its various competitors. Ex. 5 at 305; *see also* Tr. at 167-168. This is a curious suggestion considering that neither at the time of Ms. Baird's rebuttal testimony (Sept. 17, 1996) nor of her hearing testimony (Sept. 30, 1996) had USWC entered into a comprehensive 47 U.S.C. § 252 interconnection agreement with a single competitor in *any state* in USWC's region. Tr. at 95-96, 168. Moreover, Ms. Baird clarified that USWC was not suggesting that non-grandfathered reseller competitors could or should necessarily receive *CENTRON* services for resale in interconnection arbitrations. Tr. at 109. However, in the November 5, 1996 Arbitrators' Report in the consolidated AT&T, MCI and MFS interconnection arbitration before the Commission, the Arbitrators made the Decision that "USWC shall make all telecommunication services available for resale except enhanced services, and promotions of less than 90 days. Packaged services and other special offerings or

arrangements for which the rates reflect certain economies, must also be offered at wholesale.”<sup>3</sup>

CENTRON is included among this class of resale services. Arbitrators’ Report, Attachment A.

To be consistent with the Arbitrators’ Report, the Commission in this docket should reject

USWC’s attempt to circumvent the non-discriminatory resale requirements of Minnesota law and the 1996 Act by grandfathering and withdrawing CENTRON services.

Finally, neither of the remaining USWC-proposed alternatives to CENTRON service of 1FB service or CCMS service are realistic or economic alternatives for CLEC competitors in the next six to eighteen months. Tr. Vol. 1 at 189 (Stephen Gray). Aside from the lack of confidence that competitors have that USWC can support a 1FB product for resale (*id.* at 196), 1FB is a much higher priced product that is uneconomical for resale. 1FB is priced at \$42.00 per line in Minnesota as compared with an average \$13.00 per line for CENTRON service. (Tr. Vol. 3 at 43) (Krishnan). McLeod estimates that it would require a 25% wholesale discount to make resale of 1FB service economically feasible. (Tr. Vol 1 at 228). Accordingly, not even the wholesale discount in the November 5, 1996 Arbitrators’ Report would make resale of 1FB service an economically viable alternative to resale of CENTRON services (which is also eligible for the additional wholesale discount in the Arbitrators’ Report). In this context, while at the

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<sup>3</sup> Arbitrators’ Report at 18-19 (**What services should be made available for resale? (Issue 27)**)(Nov. 5, 1996), *In the Matter of AT&T Communications of the Midwest, Inc.’s MCI metro Access Transmission Services, Inc.’s and MFS Communications Company’s Consolidated Petitions for Arbitration with US WEST Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, OAH Docket No. 9-2500-10697-2, MPUC Docket Nos. P442, 221/M-96-855; P5321, 421/M-96-909; P3167, 421/M-96-729. While the Arbitrators’ Report mandates that USWC provide CENTRON as well as other retail services to CLECs at a wholesale discount of 17.66% (Report at 25), it does not specifically address USWC’s proposal to grandfather and withdraw CENTRON services.

hearing, USWC trumpeted the fact that it is currently reselling 1FB service in Minnesota (Tr. Vol. 1 at 196), it is not surprising that the only identifiable reseller of 1FB Service in Minnesota today is a company that resells 1FB to payphone service providers. Order Granting Authority to Provide Local Services, as Qualified, and to Resell Long Distance Service, In the Matter of a Petition by Choicetel, Inc. for Authority to Resell Local and Long Distance Services in Minnesota, Docket No. P-5243/NA-95-1391 (Issued April 19, 1996) (“Choicetel indicated that it initially intends to concentrate resale to payphone service providers.” Order at 2.) Resale of 1FB in a payphone environment is “not even remotely analogous” to how a CLEC would need to provision its switched local exchange services for business. (Tr. Vol. 1 at 224) (Stephen Gray). There is also a quite distinct revenue stream associated with payphone operations that differs from resale of business or residential switched services, where the building owner will pay for the line, and there is a profit sharing arrangement between the building owner and the provider of the pay phone from the revenue associated with the payphone. *Id.* at 225.

Finally, CCMS is a less flexible option and is therefore not a viable alternative to CENTRON because it offers fewer features and functionalities than CENTRON makes available to small business customers. *Id.* at 135-136 (Baird); Tr. Vol. 2 at 87-88 (Blake).

USWC’s proposed grandfathering and withdrawal of CENTRON services should be denied as contrary to the public interest, as determined not only in the 235 Order but also pursuant to the Arbitrators’ Report of November 5, 1996. The absence of an economically and functionally viable alternative and USWC’s failure to develop a promised replacement product underscores the importance of rejecting USWC’s CENTRON grandfathering proposal.

**II. US WEST'S PROPOSED WITHDRAWAL AND GRANDFATHERING OF CENTRON SERVICES, PARTICULARLY WITHOUT A SATISFACTORY, AVAILABLE REPLACEMENT PRODUCT, VIOLATES THE TELECOMMUNICATIONS ACT OF 1996.**

MFS' position is that U S West's proposed withdrawal of the Centrex family of services is illegal in that it discontinues resale of its service to new customers and unreasonably limits the terms of resale of the service to existing customers. Ex. 18 (Ruth Durbin) at 2. The Telecommunications Act of 1996 ("1996 Act") provides that incumbent local exchange carriers, like US West, must "offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers." (47 U.S.C. §251(c)(4)) and further, that all carriers have a "duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of [their] telecommunications services." (47 U.S.C. §251(b)(1)).

Unfortunately, USWC chose to rush to grandfather and withdraw CENTRON services entirely, without a satisfactory replacement product being available without restrictions to reseller and enduser customers. USWC filed its tariff proposal only a few days before passage of the Telecommunications Act in early February, 1996. It did so without having a replacement product available, an unprecedented step for USWC to take concerning a retail service approved for resale. No product in the Centrex family of services has heretofore been withdrawn by USWC before a replacement service was available. Tr. Vol. 1 at 93 (Baird). For example, when CENTRON's predecessor product, Centrex, was grandfathered, an interim successor product, ESSEX, was immediately available as a replacement. Tr. Vol. 1 at 30 (O'Brien).

Nor has USWC provided a future replacement product when it has said it would. While USWC announced in notification letters distributed to its CENTRON customers in the Spring of 1996 that a “central office-based” replacement product would be available by “late summer 1996,” no such product has been developed by that “best estimate” date, and none has been developed to date. Now USWC does not anticipate such a product being available before the first or second quarter of 1997. Tr. at 28. It appears that USWC has other priorities more important to it than offering a competitive, central office-based replacement product that is immediately available for its reseller customers. Now USWC proposes that its affected customers and potential customers wait a full year from its initiation of its tariff filing for an appropriate replacement product.

### **III. STATE COMMISSIONS THROUGHOUT USWC’S REGION HAVE UNIFORMLY REJECTED USWC’S IDENTICAL TARIFF FILING TO GRANDFATHER AND WITHDRAW CENTREX/CENTRON SERVICES.**

Numerous states in US West’s region have already carefully considered --and rejected-- US West’s region-wide tariff filing for the “grandfathering” and withdrawal of Centrex Plus service. Tr. at 104. These include the states of Oregon, Iowa, South Dakota, Wyoming, Utah, and Colorado-- nearly half of the states in USWC’s fourteen (14) state region. Ms. Baird herself testified in the South Dakota, Utah and Colorado hearings. Tr. Vol. 1 at 103. Unfortunately, she was unable to recall any specific findings in these recent decisions, not even whether USWC’s identical proposal in other states was found to be discriminatory. *Id.* at 117. Moreover, she insisted that USWC’s proposal is not discriminatory and does not violate the resale provisions of the 1996 Act. Tr. at 104-105.

On August 22, 1996, the South Dakota Public Utilities Commission ruled that the withdrawal of US West’s withdrawal of Centrex Plus services was a violation of its resale obligations under

§251(c)(4)(B) of the Act, expressly finding that US West's application was "an attempt to avoid" the Act's resale requirements. *In the Matter of the Application of U S West Communications, Inc. to Discontinue its Centrex Plus Services to New Customers, Docket No. TC96-023* (Final Order, dated August 22, 1996 at 3. (See Exhibit A attached ). In further support of its finding, the court also noted that:

Ms. Baird stated that she did not know if it would have a negative impact on US WEST if the commission ordered US WEST to continue to offer Centrex Service until such time as the new replacement service was offered...In the last ten years, US WEST has never grandfathered a Centrex Product without first making a replacement available in South Dakota...The Commission finds that Centrex Plus Service is not obsolete and is still meeting the needs of its customers.

*Id.* at 3. Finally, the South Dakota PUC further found that "US WEST's attempt to withdraw Centrex Plus Service to new customers while continuing to provide Centrex Plus Service to existing customers is discrimination...as prohibited by SDCL §49-31-11...[which] is unfair and unreasonable", and "...constitutes a violation by US WEST of its obligation under 47 U.S.C. §251(c)(4)(B) not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services." *Id.* at 4.

By Order of March 7, 1996, the Oregon Public Utility Commission rejected US West's tariff filing as "not in the public interest." In addition to finding that the U S WEST filing violated a 1994 stipulation in which U S WEST agreed to continue to provide Centrex Plus service for resale, the Commission explained:

The Commission also finds that the filing is inconsistent with ongoing efforts to open Oregon's telecommunications markets to competition. US WEST's proposal eliminates the opportunity for new resellers to purchase centrex-type products and limits the growth of its current competitors.

Moreover, the Commission finds that the filing may violate administrative rules on abandonment of service. Based on these findings, the Commission concludes that US WEST's price filing is not in the public interest.

*In the Matter of Transmittal No. 96-007-PL, a Price List Filing relating to its Centrex Plus and Centraflex 2 service, transmitted by US WEST Communications, Inc., (UT126), Oregon Public Utilities Commission Order No. 96-067 (March 7, 1996).*

Similarly, on June 14, 1996, the Iowa Department of Commerce Utilities Board ordered U.S. West to remove its Centrex Plus catalog charges, concluding that US West discriminated against AT&T by precluding the availability of Centrex Plus service for new customers. *In re McLeod Telemanagement, Inc. v. US West Communications, Inc. Docket Nos. FCV 96-1, FCV-96-3. (Decision and Order June 14, 1996) at 11.* The Iowa Board found that "[t]he development of competition in the local exchange market will be furthered by requiring US West to provide Centrex Plus service without restrictions until it has developed a replacement service which has been approved by the Board." *Id.* at 10.

The Wyoming Public Service Commission similarly rejected U S West's related proposals in Wyoming, concluding that "approval of the Centrex Plus filing is not in the public interest and will hinder and delay the opening of the local exchange market to competition within the state of Wyoming." *In the Matter of the Tariff Filing of US West Communications, Inc., Wyoming PSC Docket No. 70000-TT-96-279, Memorandum Opinion, Findings and Order (Issued Sept. 6, 1996)(Exhibit B) at 23.* The Wyoming Order further concluded that the proposed withdrawal and grandparenting of Centrex Plus service "'unreasonably discriminates' in favor of US WEST's current Centrex Plus subscribers, to the exclusion of other prospective customers as well as other potential telecommunications companies, in direct violation of W.S. § 37-15-404(a). The Wyoming Commission also agreed with MCI and AT&T that USWC's filing violates Sections 251(b)(1) and 251(c)(4) of the 1996 Act by imposing unreasonable

and discriminatory conditions and limitations on the service in an attempt to preclude its availability for resale. *Id.* at 23.

Finally, Administrative Law Judge Fritzel of the Colorado Public Utilities Commission issued a Recommended Decision on September 3, 1996 permanently suspending and canceling USWC's tariff sheets filed with Advice Letter No. 2758, and denying USWC's request to discontinue Centrex Plus as to new customers. *The Investigation and Suspension of Tariff Sheets Filed by US WEST Communications, Inc. et al.*, Colorado PUC Docket Nos. 96S-071T, 96A-051T (Exhibit C).

U S WEST's essentially identical tariff filing in Minnesota is no less discriminatory and anticompetitive as its identical filings in Oregon, Iowa, Colorado, Utah, South Dakota and Wyoming, as it is designed to eliminate competition from resellers. As such, this tariff filing is not in the interests of Minnesota consumers. As discussed above, the Commission's 1993 Order specifically found the resale of CENTRON services to be in the public interest following a thorough evaluation spanning many years. Furthermore, Minnesota law prohibits discrimination in the resale of stand-alone telecommunications services "to all similarly situated persons, including all telecommunications carriers and competitors." Minn. Stat. § 237.09(2)(a). Similarly, Minn. Stat. § 237.121(4) provides that a telephone company shall not "refuse to provide a service...to a telephone company or telecommunications carrier in accordance with its applicable tariffs, price lists, or contracts and with the commission's rules and orders." Finally, Minn. Stat. § 237.121(5) prohibits a telecommunications carrier from imposing "restrictions on the resale or shared use of its services or its network functions...." Thus, Minnesota law mandates that USWC make all of its resale services, including CENTRON, available for resale on a nondiscriminatory basis.



**IV. RESELLERS CAN HAVE A POSITIVE IMPACT UPON OPTIONS AND PRICING AVAILABLE TO MINNESOTA SMALL TO MEDIUM BUSINESSES, AND OTHER CONSUMERS, FOR SIMILAR TELECOMMUNICATIONS SERVICES.**

Much of USWC's expressed concern about arbitrage in connection with the resale of CENTRON is taken out of perspective. The aggregation of toll traffic by resellers and their enduser customers is nothing different than occurs with USWC's own preferred, large grandfathered customers. *See* Tr. Vol. 1 at 166 (Baird). The FCC has long recognized the useful public role played by resale. Its words ring especially true today as local competition is being introduced in the local exchange markets:

[W]e find substantial evidence in the record that a number of public and private benefits may be anticipated to flow from resale and sharing of domestic public switched network services. The comments of potential resellers and sharers persuade us that the elimination of these restrictions will have a number of salutary public interest effects, including the fostering of innovation and the introduction of new technology, especially new ancillary devices, and the spreading of peak-period usage. Also, resale and sharing can be expected to promote better management of communications networks, a reduction in wasted communications capacity, and the growth of customer networks for particular applications. We foresee the development of competition in the provision of telecommunications services, new entry into telecommunications markets, and stimulation of demand. **Moreover, lower rates for small to medium domestic public switched network consumers should result. We also anticipate a movement on the part of carriers toward cost-based rates, an important regulatory goal, as the prospect of arbitrage actually arises.** We will elaborate on these benefits in the course of our discussion; we mention them briefly here to emphasize that the *Hush-a-Phone* test [*i.e.*, that the common carrier's practice is just and reasonable under 47 U.S.C. §201(b)], in our opinion, is clearly met.

*Memorandum Opinion and Order, Regulatory Policies Concerning Resale and Shared Use*, ¶2, 83 F.C.C. 2d 167, 172 (October 21, 1980) (emphasis added).

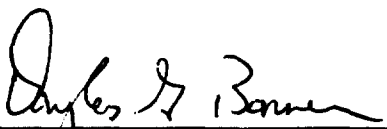
Accordingly, the FCC found restrictions against resale to be discriminatory, and as such, unreasonable, unjust, and unlawful under section 202(a) of the Communications Act of 1934. *Id.*, ¶12. at 173; *see also id.*, ¶¶ 15 and 18, at 174-175 (approving reseller arbitrage to alleviate unjust price discrimination).

### CONCLUSION

For all of the foregoing reasons, USWC's Exchange and Network Service Price List issued on April 30, 1996, seeking to grandparent and withdraw CENTRON services in Minnesota, should be rejected in its entirety. USWC should be required to continue to provide CENTRON services on a non-discriminatory basis to existing and potential customers without restriction or limitation.

Respectfully submitted,

Ruth Durbin  
Assistant Director, Central Region  
MFS Communications Company, Inc.  
1 Tower Lane  
Suite 1600  
Oak Brook Terrace, Illinois 60181

  
\_\_\_\_\_  
Douglas G. Bonner  
Mark Sievers  
Swidler & Berlin, Chartered  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007  
(202) 424-7500

**ATTACHMENT B**

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS**

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

<div>In the Matter of U.S. West Communications, Inc.'s ) Request to Grandparent CENTRON Services with ) Future Discontinuance of CENTRON, CENTREX ) and Group Usage Exchange Services )</div>	OAH Docket No.: 3-2500-10567-2  PUC Docket No.: P-421/EM-96-471
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**OPPOSITION OF MFS INTELENET OF MINNESOTA, INC. TO  
US WEST COMMUNICATIONS, INC.'S PETITION FOR REHEARING**

MFS Intelenet of Minnesota, Inc. ("MFS"), through its undersigned counsel, opposes US West Communications, Inc.'s ("USWC") Petition for Rehearing in the above-captioned proceeding. for the reasons discussed below.

**INTRODUCTION**

USWC seeks a rehearing of this Commission's February 6, 1997 Order ("Commission Order")<sup>1</sup> denying USWC's petition to grandparent and withdraw CENTRON, CENTREX and Group Use Exchange Services. USWC's Petition for Rehearing must be denied because it offers no substantive arguments in favor of rehearing, and cannot point to any error on the part of the Commission in rendering its decision. Indeed, each of the grounds presented by USWC in favor of rehearing have been fully adjudicated and have been found without merit by this Commission. The

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<sup>1</sup> USWC's motion was prematurely filed, having been filed a full week before the Commission's February 20, 1997 Order Denying Petition was actually issued. Since by its very nature a petition for rehearing challenges facts or law that a Communications or court has overlooked or misunderstood, it is difficult to understand how anyone other than a clairvoyant could file such a petition before the reading of the actual Order. In any case, the focus of this opposition is to address issues raised by USWC's petition for rehearing.

Commission's decision in this proceeding is the culmination of a year-long proceeding during which a complete and comprehensive factual record has been developed with the active participation of 13 parties. The Commission's decision, reached after oral argument, affirms the considered findings and recommendation of both ALJ Giles and the Commission staff. This proceeding has afforded all parties a full and fair opportunity to present evidence regarding the competitive implications of USWC CENTRON withdrawal proposal.

**I. THE ALLEGED "FINANCIAL IMPLICATIONS" TO USWC OF THE COMMISSION'S DECISION ARE HOLLOW AND WITHOUT RECORD SUPPORT.**

Throughout this proceeding USWC has failed to provide any evidence concerning its claims of dire financial implications to USWC if it is not allowed to withdraw and grandparent CENTRON resale. USWC continues to base its arguments solely on revenue comparisons between resold CENTRON lines and 1FB lines. Indeed, USWC has consistently refused to provide cost data essential to an analysis of relative contribution levels. Without supporting cost data, USWC's comparison is not credible. As correctly determined by the Commission:

The record in this case does not support USWC's assertion that uneconomic arbitrage is taking place with respect to CENTRON service. [USWC] has presented no cost studies that establish that CENTRON is priced below cost. Nor does the record show that USWC is actually experiencing a loss of contribution due to resale of CENTRON.<sup>2</sup>

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<sup>2</sup> Commission Order at 12.

In fact, the record plainly establishes that CENTRON accounts for 20 percent of all business lines in Minnesota,<sup>3</sup> is second only to 1FB/1FH in contribution to USWC and “makes a greater contribution than either a stand-alone PBX or PSTS PBX Service . . ..”<sup>4</sup> USWC’s “uneconomic arbitrage” argument not only is unsupported in the record, and contrary to the basic principles of a competitive marketplace but it conflicts with Telecommunications Act of 1996, (“1996 Act”) mandating the resale of all telecommunications services. See, 47 U.S.C. §251 (c) (4). USWC’s rehearing petition provides no new arguments to support USWC’s discredited claim that its contribution requirements are not being met or that CENTRON is priced below cost. Accordingly, USWC’s argument must be rejected.

## **II. USWC’S PROPOSAL HAS NO REDEEMING PROCOMPETITIVE VALUE.**

USWC’s preposterous claim that “the proposal actually is pro-competitive” has no merit or support in the record. This argument is merely a desperate attempt to obfuscate USWC’s plainly anticompetitive motivation for withdrawing and grandfathering CENTRON in Minnesota and, indeed, throughout its service region. Why else would USWC have timed its region-wide filing in February 1996, just a few days before the 1996 Act was signed into law by President Clinton? Judge Giles specifically found that by limiting the number of CENTRON resellers, “[t]he withdrawal of

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<sup>3</sup> Hearing Transcript, Vol. 1, at 106.

<sup>4</sup> *In the Matter of a Commission-Initiated Proceeding to Determine Whether Resale of Local Telephone Service is in the Public Interest*, Minnesota PUC Docket No. P-999/CI-90-235, at 9 (Emphasis Added) (“*Minnesota Public Interest Order*”); *See also* Hearing Transcript, Vol. 1, at 168-69.

CENTRON will limit consumers' choices and erect barriers to competitive entry."<sup>5</sup> The importance of CENTRON resale for successful market entry was stressed both by Judge Giles and in the FCC Order.<sup>6</sup> USWC's paradoxical position that anticompetitive conduct is procompetitive because it serves to spur competitors, is specious and contrary to well respected legal authority. The anticompetitive motivation of USWC's proposal is well established in this case. See Commission Order at 8-11.

### **III. THERE ARE NO VIABLE ALTERNATIVES TO CENTRON SERVICE.**

USWC's assertion that electronic key systems, PBX, and CCMS service represent substitutes for CENTRON offers nothing new and is unsupported in the record. As the ALJ found, none of these services is a realistic or economic alternative for CLEC competitors.<sup>7</sup> As to PBX, Ms. Baird admitted that USWC's own marketing materials extol the virtues of CENTRON/Centrex services over PBX because CENTRON is "competitively priced," with none of the "large capitalized investment and lead time for new PBX service," and because it is "less risky than investing in on-premise equipment which is subject to obsolescence...." Tr. at 119-121; Ex. 7. CCMS is a less flexible option and is therefore not a viable alternative to CENTRON because it offers far fewer features and functionalities than CENTRON makes available to small business customers. Tr. Vol. 1, at 135-136; Tr. Vol. 2, at 87-88; Exhibits 1, 27. Likewise, electronic key systems, although they

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<sup>5</sup> *Staff Briefing Papers for P-421/EM-96-471*, at 9 (Feb. 6, 1997).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

may provide complimentary features, are no substitute for CENTRON. *See* Hearing Transcript, Vol. 1, at 200-202. If they were, end-users would not purchase CENTRON service in addition to electronic key systems. As the Commission properly found, there simply “is no adequate substitute service for CENTRON and without CENTRON the cost of telephone service would be more expensive than it is now” Commission Order at 11.

USWC’s failure to develop a replacement product also underscores the importance of rejecting USWC’s CENTRON grandfathering proposal. As this Commission correctly decided, USWC’s attempt to discontinue CENTRON and eliminate an important service option which is increasingly in demand by Minnesota consumers, is inconsistent with the implementation of local competition as required under the 1996 Act. *Id.* at 10-11.

#### **IV. USWC’S PROPOSAL VIOLATES BOTH STATE AND FEDERAL LAW**

Contrary to USWC’s self-serving claims, its proposal violates the 1996 Act’s mandate that incumbent local exchange carriers must “offer for resale at wholesale rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. §251(c)(4). Further, all carriers have a “duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of [their] telecommunications services.” 47 U.S.C. §251(b)(1). As unequivocally stated by the Commission, “[i]t appears undisputable to the Commission that USWC’s proposal is to impose restrictions on the resale of its services.” Commission Order at 9. USWC’s twelfth hour effort to grandfather and withdraw CENTRON services entirely, without a satisfactory replacement product being available to its customers, unlawfully restricts resale in violation of the 1996 Act. *See* Commission Order at 10.



Similarly, contrary to USWC's persistent assertions, its proposal violates Minn. Stat. § 237.121, subd. 5, which prohibits carriers from imposing restrictions on the resale of its services or network functions.

USWC's claim that growth restrictions in its proposal were altruistically intended to "encourage US West's existing customer base to look for alternative services in a prompt and timely manner" is simply a cynical disingenuous view of a record that wholly supports the opposite conclusion. Growth restrictions are totally unnecessary to achieve this purported aim. In short, USWC's proposal is anticompetitive, and unlawful under both Minnesota law and federal law.

### **CONCLUSION**

USWC's petition for rehearing presents no new arguments to support the grandfathering and withdrawal of CENTRON service. Each of the grounds presented by USWC in favor of rehearing have been fully adjudicated and have already been found without merit by this Commission. Consequently, and for the reasons more fully discussed herein, MFS respectfully requests that USWC's petition for rehearing be denied.